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ABSTRACT

This pamphlet describes requirements under Section 504 of the Rehabilitation Act of 1973 relating to the discipline of students with disabilities. Information is provided on the educational requirements of the legislation, the due process procedures, the suspension and expulsion of students with disabilities, and the reevaluation process required before suspension or expulsion. Suspension or expulsion for more than 10 consecutive school days constitutes a "significant change in placement" under Section 504 thus requiring a reevaluation of the student's placement to determine whether the misconduct in question is caused by the student's disability and whether the student's current placement is appropriate. Only if it is determined that the misconduct is not caused by the student's disability may the student be suspended or expelled in the same manner as students without disabilities. However, even in such cases, the Individuals With Disabilities Education Act (IDEA) requires states to continue to provide appropriate educational services to those students. The coverage of individuals with alcohol and drug addictions under Section 504 and the Americans with Disabilities Act is also explained. (CR)

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DISCIPLINE OF STUDENTS WITH HANDICAPS IN ELEMENTARY AND SECONDARY SCHOOLS

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

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INTRODUCTION

In recent years, some public school officials have experienced problems in administering nondiscriminatory disciplinary sanctions in the form of long-term suspension or expulsion of students with handicaps. The Office for Civil Rights (OCR) in the Department of Education (ED) enforces Section 504 of the Rehabilitation Act of 1973, as amended, which protects the rights of students with handicaps in programs that receive Federal financial assistance. This pamphlet summarizes the responsibilities of school officials under Section 504 and the rights of students with handicaps and their parents or guardians in situations requiring disciplinary action that could result in expulsion from or long-term suspension of educational services.

On April 18, 1991, the President announced ***AMERICA 2000****: An Education Strategy. It is a bold, complex, and long-range plan designed to move every community toward the six national education goals that the President and the Governors adopted in 1990. Consistent with* ***AMERICA 2000****,*

the Office for Civil Rights has instituted a National Enforcement Strategy designed to help protect equal educational opportunity for all students. Nondiscrimination in school discipline is consistent with equal educational opportunity and promotes an environment where all students can learn. The goals enumerated in ***AMERICA 2000,*** *and the National Enforcement Strategy, will help in our nationwide crusade—community by community, school by school—to make America all that it should be.*

SECTION 504

The Section 504 regulation requires a recipient of federal financial assistance that operates a public elementary or secondary education program to provide a "free appropriate public education" to each qualified handicapped person in its jurisdiction, regardless of the nature or severity of the person's handicap.

Under Section 504, an appropriate education is "the provision of regular or special education and related aids and services" and is comprised of the following:

- *educational services designed to meet the individual educational needs of students with handicaps as adequately as the needs of non-handicapped students are met;*

- *education of each student with handicaps with nonhandicapped students, to the maximum extent appropriate to the needs of the student with the handicap;*

- *nondiscriminatory evaluation and placement procedures established to guard against misclassified or inappropriately placed students;*

- *a periodic reevaluation of students who have been provided special education and related services; and*

- *due process procedures that:*

  - *give parents notice of all actions related to the identification, evaluation, and placement of a child who is believed to be handicapped;*

  - *enable parents and guardians to examine all records relevant to their child's education;*

– *provide for an impartial hearing to review evaluation and placement decisions, with opportunity for participation by parents and representation by counsel; and*

– *provide a review procedure for parents who disagree with the hearing decision.*

The Individuals with Disabilities Education Act (IDEA), formerly known as the Education of the Handicapped Act, administered by ED's Office of Special Education and Rehabilitative Services (OSERS), also has provisions requiring states to provide children with handicaps a free appropriate public education (FAPE). Although this pamphlet does not address the requirements of the IDEA, implementation of an individual education program in accordance with the IDEA is one way a school district can meet the FAPE requirements of Section 504.

SUSPENSION AND EXPULSION OF STUDENTS WITH HANDICAPS

As stated previously, Section 504 requires that a school district evaluate a

child with handicaps before making an ***initial placement*** *of the child in a regular or special education program and* ***any subsequent, significant change in his or her placement.*** *The permanent exclusion of a child with a handicap or exclusion for an indefinite period, or for* ***more than*** *10 consecutive school days, constitutes a "significant change in placement" under Section 504.*

A series of suspensions that are each of 10 days or fewer in duration that creates a pattern of exclusions may also constitute a "significant change in placement." The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short exclusions be used to avoid the requirements of reevaluation before suspensions of more than 10 days.

Among the factors considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school. OCR does not consider a series

of suspensions that, in the aggregate, are for 10 days or fewer to be a significant change in placement.

Consistent with the regulation, before implementing a suspension or expulsion that constitutes a significant change in a handicapped student's placement, a school district must conduct a re-evaluation of the student to determine if the misconduct in question is caused by the student's handicapping condition or if the student's current educational placement is appropriate. (Reevaluation procedures that comply with the IDEA would fulfill the requirements of Section 504.)

THE REEVALUATION PROCESS

As a first step in the reevaluation, the district must determine whether the misconduct is caused by the child's handicapping condition. This determination may be made by the same group of persons who make initial placement decisions in conformance with the requirements of Section 504. The group must have available to it information that competent professionals would require, such as psychological evaluation data related to behavior, and

the relevant information must be recent enough to afford an understanding of the child's current behavior. The determination may not be made by the individuals responsible for the school's regular disciplinary procedures, such as the school principal or school board officials, who may lack the necessary expertise and personal knowledge about the child to make such a determination. These individuals, however, may participate as members of the placement decision group.

If it is determined that the handicapped child's misconduct ***is*** *caused by the child's handicapping condition, the evaluation team must continue the evaluation, following the requirements of Section 504 for evaluation and placement, to determine whether the child's current educational placement is appropriate. If it is determined that the misconduct is* ***not*** *caused by the child's handicap, the child may be excluded from school in the same manner as similarly situated nonhandicapped children are excluded.*

In such a situation, Section 504 would permit all educational services to the child to cease. However, the Office of Special

Education and Rehabilitative Services has determined that States receiving funds under the Individuals with Disabilities Education Act (IDEA) are required by that statute to continue providing educational services to handicapped children who have been expelled.

DUE PROCESS

When the placement of a child with handicaps is changed for disciplinary reasons, the child and his or her parent or guardian are entitled to the procedural protections required by Section 504. (A school district may use due process procedures that meet the requirements of the IDEA to comply with the Section 504 requirement for procedural safeguards.) This includes appropriate notice to parents, an opportunity for the examination of records, an impartial hearing with the participation of parents and an opportunity for counsel, and a review procedure. Thus, if, after a reevaluation of an initial placement decision, the parents disagree with the determination regarding the relationship of the behavior to the handicap, or with

the subsequent placement proposal in those cases where the behavior is determined to be caused by the handicap, they may request an impartial hearing.

ALCOHOL AND DRUG ADDICTION

Drug and alcohol addiction may be handicapping conditions covered by Section 504, so long as a person is not a current user of alcohol or illegal drugs.

In July 1990, the Americans with Disabilities Act (ADA) was enacted. That law amended the Rehabilitation Act of 1973 with regard to the disciplining of individuals who engage in the illegal use of drugs or in the use of alcohol.

Under the ADA, an individual who is currenty engaged in the illegal use of drugs is not a "handicapped individual" under Section 504. However, a person who is addicted to drugs who is no longer engaged in the illegal use of drugs might be handicapped and entitled to all of the rights under Section 504. A person erroneously regarded as engaged in the use of illegal drugs might also be regarded as handicapped under Section 504.

Because alcohol and illegal drug users are not protected by Section 504, school districts may take disciplinary action regarding the use or possession of illegal drugs or alcohol against ***any student with handicaps who currently is engaged in the illegal use of drugs or in the use of alcohol*** *to the same extent that disciplinary action is taken against nonhandicapped persons for the same behavior. Furthermore, the due process procedures discussed above do not apply to disciplinary actions regarding the use or possession of illegal drugs or alcohol by students with handicaps who are currently engaged in the illegal use of drugs or in the use of alcohol.*

A child who has a handicapping condition other than alcoholism or drug addiction and is ***not*** *engaged in the illegal use of drugs or in the use of alcohol, would have all of his or her rights under Section 504, even with regard to possession of illegal drugs or alcohol. For example, if a mentally retarded child who does not use drugs or alcohol is found in possession of drugs or alcohol, the school district would be required to determine whether this misbehavior resulted from the child's handicapping condition.*

ADDITIONAL INFORMATION

OCR does not prevent a school from using its normal, reasonable procedures, short of a significant change in placement, for dealing with children who are endangering themselves or others. Where a child presents an immediate threat to the safety of others, officials may promptly adjust the placement or suspend the child for up to 10 school days, in accordance with rules that are applied evenhandedly to all children.

HOW TO OBTAIN ADDITIONAL ASSISTANCE

OCR enforces Section 504 and interprets the Section 504 regulations. OSERS administers IDEA and interprets IDEA's regulations. Because Section 504 and IDEA are different federal statutes, they may have different compliance standards. For further information regarding the requirements of Part B of IDEA that govern discipline of students with disabilities, contact:

Office of Special Education Programs
Office of Special Education
and Rehabilitative Services
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2570

To obtain additional assistance, *see OCR's list of its ten regional offices, which contains the address and telephone number for the OCR office that serves your area.*

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